



City of Homer

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July 7, 2004

RECEIVED

JUL 12 2004

Local Boundary Commission
Department of Community and Economic Development
550 West Seventh Ave. Suite 1770
Anchorage, AK 99501-3510

Local Boundary Commission

Re: City of Homer Annexation Remand — Homer Reply Comments

Dear Members of the Commission and Staff:

This is the City of Homer's reply to the written comments filed with DCED on or before June 24, 2004.

Milli Martin

Ms. Martin points out that KESA has 200 square miles to cover, and identifies important early KESA projects, primarily intended to increase service to the areas most distant from the City. She rightly points to the tremendous potential for a close working relationship between KESA and the City. This will work best when the City addresses needs within and close to City boundaries while KESA focuses on the area well away from City boundaries.

The initial inclusion within KESA of the 4.58 square miles and 900 residents in the area approved for annexation was an unwise choice from the start. Those residents and properties are, as the LBC found, part of the Homer community and in clear need of a full range of city services. These factors indicate that the area approved for annexation should never have been included in KESA. To meet the greater need for services in this area and address the greater impacts this area has on the City of Homer, annexation was a better choice than inclusion in KESA. Annexation, not a local emergency service area, better serves the overall best interests of the residents, the City, and the State of Alaska.

Linda Reinhart; Alaskans Opposed to Annexation

The LBC and Homer did not "cherry pick" the areas near Homer for annexation with any intent to deprive KESA of the most lucrative part of its tax base, as implied by Ms. Reinhart and expressly alleged by Alaskans Opposed to Annexation. The LBC approved annexation for this particular area because it was already part of the Homer community, it was contiguous and close to Homer, it was the most in need of city services, and it was having the greatest impact on Homer. In short, it best met the standards for annexation. It is precisely because it is more densely populated and developed that it is more suitable for annexation.

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When annexation is warranted, as in this case, one cannot escape the fact that the tax assessed valuation of any surrounding service areas will be decreased when property is annexed into a city. Because a city is the preferred city service provider over proliferating limited service areas, the best interests of the state are served by annexation. When annexation does occur, the adjacent service areas must adjust accordingly. That may mean, as in this and every similar case, the borough must adjust its service area budget, tax rates, boundaries, levels of service, or otherwise. The Borough and the KESA voters are clearly capable of doing any or all of these things. To have to consider such adjustments is simply an ordinary effect of changing demographics that led to the necessity of annexing some of the Borough territory to Homer. Those ordinary effects certainly do not override the state's best interest or justify denying a well-founded annexation that is otherwise overdue.

Concerning the question of "cherry picking," one might just as well ask why the Kenai Peninsula Borough has chosen to segregate (i.e., "cherry pick") the Nikiski Fire Service area with a tax base in 2002 of some \$1.2 Billion from the rest of the Borough's fire service areas? Other parts of the Borough need fire services, too, and if the Borough had chosen to provide nonareawide fire services to all non-city Borough residents, then the residents of KESA could enjoy the benefits of the lucrative Nikiski tax base, too. One might argue that Nikiski is not close to Kachemak Bay. While that is true, it is certainly feasible that a unified western Kenai Peninsula fire service area could effectively provide fire services to an area encompassing everything from Hope to the head of Kachemak Bay, including Nikiski and KESA. If one nonareawide road service area works well for an even larger portion of the borough, the same could be true of a western peninsula fire and emergency service area. The crucial point is that the Borough has tremendous resources to fund service areas, and the assembly can exercise control over the boundaries of its service areas to make them work. The Borough has much flexibility to create or modify service areas as needed to make the provision of fire and emergency services available to all on an equitable basis. The City cannot do this for the Borough. Only the Borough has the responsibility and ability to do so.

Phil and Tammy Clay; Mike Ryan

The Clays and Mike Ryan point out some of the reasons why a rural fire department needs different equipment than a fire department that serves more densely populated and urbanized areas. Narrow back roads with sharp turns are better served by smaller equipment. This point emphasizes that the annexation of the more populated areas near Homer to the City will enhance the mission of KESA by allowing it to focus more on the rural, harder to get to areas through its choice of equipment and station locations.

Abigail Fuller

The story related by Ms. Fuller serves as a good illustration why the state's best interests are served well when Homer annexes (and provides services directly to) the areas near the City where it can promptly respond, while KESA turns its attention to under-served areas that are further away and not so easily served by the City.

Kevin Waring

The City concurs in Mr. Waring's insightful comments on the evidence in the record and the conclusions it supports. While Mr. Waring's discussion of the legal premises underlying the Superior

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Court remand decision has considerable merit, the City chooses not to comment on Mr. Waring's discussion of the legal issues at this time.

KPB Mayor Dale Bagley

The letter from Mayor Bagley contains comments of both the KPB administration and the KESA board, but not the KPB Assembly. These comments may be summed up as follows: the tax base is reduced, costs are not significantly reduced, and there may be a "loss of potential for recruiting." This letter does not state that KESA will be unable to continue to provide services. It does not say that KESA cannot make adjustments or find other sources of revenue. KESA has numerous options, including the raising of the millage rate if the arbitrarily established limit of 1.75 mills is insufficient to provide adequate service to the huge service area.

Homer's annexation was about much, much more than fire and emergency services. The people in the outlying area do have a great need for fire and emergency services that can be met by KESA, but those who live closest to Homer have a much greater impact on the City and have a need for many more of its services. The interests of the people and of the state are best met when those who have the greatest impact on the City and need the widest variety city services are annexed into the City. Because KESA can never perform the functions of city government, it must yield to annexation in this case. The Kenai Peninsula Borough is fully capable of making adjustments and exercising other options as needed to keep KESA adequately funded and operational.

Citizens Concerned About Annexation

The comments submitted by Kachemak Area Coalition, d.b.a. Citizens Concerned About Annexation, offer another explanation of how the fire and emergency services needed in the outlying areas are not as well-served by the urban-oriented services offered by the City of Homer as they are by a rural-focused department. See CCAA Comments at 5-8.

The essence of the CCAA argument (and of others as well) is that the City should be denied annexation of the 4.58 square miles that is already a part of the Homer community, is already in need of and is using Homer services, has the potential for the greatest negative impact on Homer, and is proper for annexation in every respect. And for what reason? So KESA can use the tax revenues from property that should be in Homer to fund services provided in under-served areas that are remote from the City. CCAA advocates taking property and citizens (and tax revenues) that "belong" to the City (i.e., should be annexed) and giving them to KESA so the residents of Diamond Ridge, McNeil Canyon, Kachemak Selo, and other distant areas can have better services at a lower tax rate.

Homer does not oppose better services for the distant areas, but Homer does oppose the effort to deny Homer jurisdiction over areas that should be in the City limits so tax revenues can be diverted from the City to KESA to fund those distant services.

Judge Rindner has directed the LBC to consider the effects of annexation on KESA, but to do so fully the LBC must also consider the converse. What is the effect of maintaining KESA's original boundaries on the City of Homer? Or to pose the question in another way, what is the effect of non-annexation on the City? That question has, to a very great extent, already been addressed by the LBC. The December 26, 2001, Statement of Decision explains how Homer has already been impacted by

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the development and population that surrounds it, and how there will continue to be very serious impacts if the area is not annexed. The effects of KESA on the City of Homer are more varied and considerably more profound than the effects of Homer's annexation on KESA. When added to the balance of competing interests, these effects of non-annexation on Homer show that it is definitely in the best interests of the people, the City, and the State of Alaska to approve the annexation.

CCAA states that the January 1, 2002, assessed value of property in KESA (before annexation) was \$304,009,540, and annexation removed \$75,395,600 from the total. CCAA states these figures were provided by the KPB assessing department. Those numbers do not appear to be correct. They are not consistent with the information provided by Mayor Bagley in his letter to the LBC dated June 24, 2004, or with the figures provided to the City by the KPB assessing department, see Exhibit 1 to City's letter to LBC, June 24, 2004.

If one were to use the figures provided by Mayor Bagley, then a taxable assessed value of \$238,585,300 taxed at 1.75 mills would yield a total tax of \$417,524. The tax base was reduced in 2002 after annexation to \$177,162,069. To yield the same amount of taxes (\$417,524), the millage rate on that tax base would have to increase to 2.36 mills. This rate is very reasonable in comparison to the millage rates applied by the KPB to its other fire and emergency service areas. The 2002 millage rates for the KPB fire and emergency service areas were as follows:

Nikiski Fire Service Area	2.30 mills
Bear Creek Fire Service Area	2.25 mills
Anchor Point Fire Service Area	2.00 mills
Central Emergency Service Area	2.35 mills
KESA	1.75 mills

See Exhibit 1 attached to this letter. As is evident from the comparison, 1.75 mills is not adequate to fund any other fire or emergency service area. It is certainly reasonable to expect that the Borough would increase the millage rate in KESA to 2.36 mills, a level commensurate with other functioning service areas, if it is necessary to meet KESA's funding needs. On the other hand, it is not reasonable that KESA or the Borough should be able to stop a justified and overdue annexation just so the service area taxpayers can continue to enjoy an artificially low millage rate that was arbitrarily set before KESA came into being.

CCAA makes a statement about the problem of taking money from KESA and giving it to Homer, CCAA Comments at 10. It is very interesting to reverse this statement, because doing so aptly describes the problems of taking tax money from Homer and giving it to KESA. Consider the following reversal of CCAA's argument:

The problem with taking money from [Homer] and giving it to KESA] is that [KESA] cannot provide the same improvements to services in the [annexed] areas that [Homer] can, simply because of jurisdictional issues. [KESA] simply does not have the authority to [provide essential city services within]

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its boundaries. [KESA] also has different priorities for what to spend the fire dept.'s money on, because their focus is on meeting [rural] needs. ... [KESA] cannot make up for the loss to [Homer] by improving its own services, because that does not meet [Homer's] needs.

That restatement pretty well illustrates the problem with CCAA's approach. CCAA and the other advocates for KESA have a narrow, myopic point of view -- focused solely on providing fire and emergency services, primarily to rural areas.¹ Homer has a much broader and deeper point of view -- to provide not only fire and emergency services, but also to extend to the Homer community a much broader range of essential city services together with all of the privileges and duties of full participation in local government. Even if it wanted to do so, KESA will never have the legal authority or fiscal wherewithal to meet those objectives.

Homer agrees with CCAA's point that fighting wildfires is the state's responsibility. However, CCAA then goes on to argue that if the City has the benefit of the annexed area's tax base, then KESA might not have the money or equipment to promptly attack a wildfire fueled by beetle-killed spruce, and therefore it might cost the state millions of dollars for an extended fire fight. This problem, if it actually amounts to something more than a hypothetical, should be addressed by the state increasing its funding for wildfire preparedness. The City also has a wildfire cooperative agreement with the state, so both the City and KESA would benefit from increases in state funding.

It is important to understand the actual effect on Homer if CCAA's position were adopted. The net effect would be that the City of Homer will suffer a loss of tax revenue in order to finance KESA efforts to fight wildfires that are ultimately a state responsibility. This taking of funds from Homer and giving them to KESA for the state's benefit not only impedes Homer's financial resources available to fight wildfires, but more significantly it financially weakens the City overall. KESA has 1.75 mills at stake (approximately \$107,490 in 2002), but Homer has approximately 5 mills of property tax and an even greater amount in sales taxes at stake (total revenue estimated as slightly more than \$900,000, LBC Statement of Decision at 20, December 26, 2001.) Depriving Homer of these revenues may ultimately increase Homer's dependence on the state for revenue sharing, grants, and other funding as alternatives to taxes it cannot collect because its ability to tax has been diverted to KESA. This may help the Division of Forestry's fire fighting budget, but the end result of a weakened and financially strapped city is NOT in the best interests of the state.

Conclusion

CCAA and others argue that if LBC continues to approve the annexation after considering its effects on KESA, then the decision must once again be submitted to the Alaska Legislature for approval or veto. This is not required by law or regulation. It does not even make sense to do so. The Legislature

¹ CCAA goes so far as to say that "the benefits of annexation to Homer have nothing to do with saving lives or property." CCAA Comments at 11. In saying this, CCAA is showing symptoms of myopia so severe as to verge on blindness to reality. The major reason that cities exist is to promote the public health, safety, and welfare of their residents. Fire safety is but one aspect of the whole panoply of health, safety, and welfare concerns that cities address.

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has already approved this annexation, which has been actually and legally in effect since May 2002. The superior court's decision and order did not invalidate the annexation, nor did it even suspend its effect. The annexation has been in place for more than two years, and it now stands as approved unless the court invalidates it. Resubmission of the annexation to the Legislature in the absence of invalidation could only create legal chaos and extend the court battle for many more years.

Thank you for the opportunity to respond to the comments of others. The City urges the LBC to fully consider the impact of annexation on KESA and the impact of denying annexation on the City. After doing so, the Commission should come once again to the conclusion that the annexation was, and still is, fully merited and in the best interests of the state.

Very truly yours,

CITY OF HOMER



Walt Wrede
City Manager

JUL-01-2004 THU 04:53 PM KENAI PEN BOR CLERK

FAX NO. 9072628615

P. 01

Kenai Peninsula Borough Assembly**Borough Clerk's Office**

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FAX TRANSMITTAL	
TO: Gordon Tans	2 PAGES, INCLUDING THIS PAGE
NUMBER: 907-276-3108	
DATE: July 1, 2004	FROM: Sue Ellen Essert - Clerk's Office

Attached is the information you requested yesterday from Linda. If I can be of further assistance please let me know.

Have a good day!

Exhibit 1 p.1 of 2

JUL 01 2004 THU 04:00 PM REMIT PER BOR CLERK

FAX NO. 9072353148

1. 02

Square Miles / Acres

The borough does not have any of the boundary information from 2002. Below is the current information.

Nikiski Fire Service Area	5,479.81 sq. milcs	/	3,507,076 acres
Bear Creek Fire Service Area	14.95 sq. miles	/	9,568 acres
Anchor Point Fire Service Area	127.98 sq. miles	/	81,908 acres
Central Emergency Service Area	886.35 sq. miles	/	567,264 acres
Kachemak Emergency Service Area	214.37 sq. miles	/	137,197 acres

<u>Property Tax Mill Rate</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Nikiski Fire Service Area	2.30	2.30	2.30
Bear Creek Fire Service Area	2.25	2.25	2.25
Anchor Point Fire Service Area	2.00	2.00	2.00
Central Emergency Service Area	2.35	2.60	2.60
Kachemak Emergency Service Area	1.75	1.75	1.75

Exhibit 1 p. 2 of 2